

Municipal role in wind power regulation

Overview

Maine's Growth Management Act states that it is the intent to "(e)stablish, in each municipality of the State, local comprehensive planning and land use management." (MRSA 30-A §4312, sub-2.A). Practically speaking, within the context of home rule as generally put forward in the Maine Constitution and in statute, this means that municipalities in Maine have land use decision-making authority. This decision-making authority is implemented through local ordinances, which are generally implemented within certain limitations (e.g., so long as ordinances do not frustrate the purpose of any state law—MRSA 30-A §3001, sub-3) and in certain cases subject to state minimum requirements (e.g., shoreland zoning and timber harvesting).

Zoning

Zoning ordinances are a commonly used tool employed by municipalities to govern land use decision making, and commonly divide municipalities into districts and prescribe and reasonably apply different regulations in each district (30-A MRSA §4301, sub-15A). Zoning ordinances are required to be consistent with a municipality's comprehensive plan (30-A MRSA §4314, sub-3). Municipalities can also adopt other types of land use ordinances (rate of growth, impact fee, telecommunications tower, etc.) as long as they are consistent with the municipality's comprehensive plan.

Municipalities in Maine have not adopted wind-power specific ordinances to date except for Rockport, which did so in June 2007 (partly in response to a proposal for Camden Hills Regional High School). Rockport's ordinance contains setback, height, and minimum lot size requirements, as well as noise standards. Freedom had been considering a wind power project under a commercial development ordinance, but this ordinance was recently repealed at town meeting (and so the project may only require a building permit). Telecommunications tower ordinances (or sections of a zoning ordinance focused on such structures) are more prevalent, such as in Camden, Brunswick, and other municipalities (note that SPO had developed a model telecommunications ordinance). However, several common aspects of zoning ordinances may be applicable to wind power development:

- Zoning ordinances or site design review ordinances often contain height and/or setback restrictions. A variance from such a restriction may be required.
- Some municipalities (for example, Camden) have ridge-top or high elevation standards, which may limit structure heights and/or contain scenic quality/visual preservation components.
- Zoning ordinances often contain references to "essential services" which are variably defined, but the following excerpt from Cape Elizabeth is an example: "Utility facilities including gas, electrical, communication, steam, fuel, water or sewage transmission, collection, or distribution systems." Essential services are generally allowed in zoning ordinances. Depending on the exact language of a

definition, wind power generation may or may not be included in the definition of essential services.

- Zoning ordinances often contain references to “accessory structures” or “accessory uses” which can be allowed if the use or structure is considered secondary to a primary use of a property (e.g., a shed on the same property as a house). Depending on the definition of accessory structure/use, a wind power generating tower used by a home owner to supply power may be considered accessory.

One consequence of these considerations is that local approval standards vary from one municipality to the next.

SPO involvement in local land use decision-making is comprised of two components: (1) review of local comprehensive plans for consistency with the Growth Management Act; and (2) providing technical assistance. Technical assistance has included the development of model ordinance language

Shoreland zoning

In general, shoreland zoning applies to areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal or freshwater wetland, or within 75 feet of the high-water line of a stream (38 MRSA §435). The Shoreland Zoning law requires municipalities to protect shoreland areas by adopting shoreland zoning maps and ordinances (in accordance with minimum state standards). In some municipalities, shoreland zoning is the only zoning present. Within the shoreland zone, there are limitations on the amount of vegetation that can be cleared and structure setbacks.

Other potential local oversight roles

The Site Location of Development (Site Law) and Natural Resources Protection Act (NRPA) both contain provisions that potentially allow state permitting authority to be delegated to a municipality. In both cases, this delegated authority is allowed upon DEP approval, which is granted pursuant to certain conditions (for example, Site Law delegation is only possible if the municipality has adopted subdivision and site plan review ordinances). Therefore, in some (few) municipalities, local approval pursuant to the Site Law and NRPA would also be required.